

LFC Requester:**Connor Jorgensen****AGENCY BILL ANALYSIS
2016 REGULAR SESSION****WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:****LFC@NMLEGIS.GOV***and***DFA@STATE.NM.US***{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}***SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}**Check all that apply:***Original** X **Amendment** **Correction** **Substitute** **Date** January 19, 2016**Bill No:** SB 11**Sponsor:** Sen. Peter Wirth and James**Agency Code:** 305**Short** Campaign Finance Reporting**Person Writing** Sally Malavé**Title:** Requirements**Phone:** 827-6031**Email** smalave@nmag.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB 80, HJR 5, SB 12 and SB 69
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

Synopsis: SB 11 adds new provisions to and amends certain provisions of the Campaign Reporting Act, NMSA 1978, Sections 1-19-25 to -37 (1979), as amended ("CRA").

Section 1 of SB 11 adds a new section to the CRA relating to reporting requirements for independent expenditure. It requires a person making an independent expenditure in an amount that exceeds \$3,000 to file a report with the SOS within a certain time period. It requires a person making independent expenditures totaling more \$3,000 to report the name, address and amount of contribution of each person who contributed more than \$200 in the previous 12 months and earmarked or responded to a solicitation for contributions to make independent expenditures. It further requires a person making independent expenditures totaling more \$3,000 (1) to establish a segregated bank account consisting only of funds only of funds contributed for the purpose of making independent expenditures; and (2) identify by name and address each contributor who contributed more than \$5,000 to the person in the previous 12 months.

Section 2 of SB 11 adds a new section requiring disclaimers in advertisements exceeding \$3,000 in value or in an amount that, when added to the aggregate amount of expenditures for advertisements by the same person during the preceding 12 months, exceeds \$3,000. The disclaimer shall contain the name of the candidate, committee, or other person who authorized and paid for the advertisement. It provides certain limited exceptions for small items upon which the disclaimer cannot be conveniently printed or in certain instances where it would be impracticable.

Section 3 of SB 11 amends Section 1-19-26 of the CRA to add new definitions for "advertisement", "ballot measure", campaign expenditure", "coordinated expenditure", "independent expenditure", and "political party." It also amends the current definitions for "bank account", "campaign committee", "candidate", "contribution", "election", "expenditure", "political committee", "political purpose" and "proper filing officer". The definition of "candidate" raises the threshold for contributions or expenditures from \$500 to more than \$1,000 for non-statewide office and from \$2,500 to \$3,000 for statewide office; the definition of "contribution" includes a coordinated expenditure; deletes from the definition of "expenditure" the exclusion of administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the political committee.

Section 4 amends Section 1-19-26.1 of the CRA, relating to registration requirements for political committees. It expressly requires a political committee to appoint and maintain a treasurer and file a statement of organization within 3 days of receiving, contributing or expending more than \$1,000 (up from \$500).

Section 5 amends Section 1-19-27 of the CRA, relating to reporting requirements, to require without exception all reporting individuals to reports of expenditures and contributions, as well as statements of no activity, with the SOS on forms prescribed by the SOS.

Section 6 amends Section 1-19-29 of the CRA, relating to the time of place of filing reports, (1) to extend the time for filing certain reports; (2) to provide specific timeline for reporting independent expenditures, and (3) to require report of all expenditures made and contributions made or received not previously reported within certain period after primary and general election by midnight on the 30th day after a primary election and general election, respectively. It adds political committees and campaign committees to those individuals that shall file a statement of no activity when the individual or committee has not received any contributions or made any expenditures since their last report was filed.

Section 7 makes minor revisions to Section 1-19-31 of the CRA, relating to the contents of reports of expenditures and contributions.

Section 8 amends Section 1-19-34 of the CRA, relating to candidates, political committees, treasurer, bank account, anonymous contributions and contributions from special events, by affirmatively stating the duty of political and campaign committees and candidates to appoint and maintain a treasurer, authorize the disbursement of money and receipt of contributions, and establish and maintain separate bank account(s) for depositing contributions and making expenditures. It raises the limit of anonymous contributions from \$2,000 to \$3,000 for statewide races and from \$500 to \$1,000 for all other races. It provided that no person shall provide more than \$25 in cash at a special event.

Section 9 amends Section 1-19-34.1 of the CRA, relating to fundraising prohibition during the legislative session, to make it gender neutral.

Section 10 amends Section 1-19-34.3, relating to the prohibition of making contributions in one name for another, to prohibit concealing the true source of contributions used to make independent expenditures.

Section 11 amends Section 1-19-34.6 of the CRA, relating to civil penalties, by authorizing the attorney general or district attorney to institute a civil action, with or without a referral from the SOS, for any violation of the CRA. It raises the civil penalty that may be imposed from \$250 to up to \$1,000 for each violation, not to exceed a total of \$20,000, up from \$5000.

Section 12 amends Section 1-19-34.7, relating to contribution limitations, by providing that with limited exception, a person, including a political committee, shall not make a contribution to a candidate, including the candidate's campaign committee, or to a political committee in an amount that will cause that person's total contributions to exceed \$5,000 during a primary election cycle or \$5,000 during a general election cycle. It shifts the responsibility for the finding regarding contributions in excess of the limits to be deposited in the public election fund from the SOS to the district court.

Section 13 amends Section 1-19-36, relating to penalties, by removing the term “Criminal Enforcement” from its title. Otherwise, Section 1-19-36 remains unchanged.

Section 14 is a temporary provision directing the SOS, in consultation with the attorney general, to promulgate rules to implement the amendatory provisions of SB 11 by December 31, 2016.

Section 15 repeals Sections 1-19-16 (campaign practices: printing or publishing campaign material without specifying sponsor; penalty) and 1-19-17 (campaign practices: circulation of campaign material without specifying sponsor; penalty).

If enacted, Section 16 provides effective date of November 9, 2016.

FISCAL IMPLICATIONS May have fiscal implications for this office, as SB 11 authorizes the Attorney General to institute civil actions in district court for any violation of the CRA, to prevent a violation that involves an unlawful solicitation or the making or acceptance of an unlawful contribution, or any other provision of the CRA. It also contemplates that the SOS will consult with the Attorney General for the promulgation of rules to implement SB 11.

SIGNIFICANT ISSUES None.

PERFORMANCE IMPLICATIONS May have performance implications for this office, as SB 11 authorizes the Attorney General to institute civil actions in district court for any violation of the CRA, to prevent a violation that involves an unlawful solicitation or the making or acceptance of an unlawful contribution, or any other provision of the CRA. It also contemplates that the SOS will consult with the Attorney General for the promulgation of rules to implement SB 11.

ADMINISTRATIVE IMPLICATIONS May have administrative implications for this office, in connection with the promulgation of rules to implement SB 11.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP SB 11 relates to HB 80, HJR 5, SB 12 and SB 69

TECHNICAL ISSUES Given the amendments in Section 11 regarding civil penalties, would it not be best to combine subsections B and C since the new penalties (\$1,000 per violation to a maximum of \$20,000) will now apply to all violations of the of the Act, whereas in the current law the penalties differ for (i) unlawful solicitation and the making or acceptance of an unlawful contribution (current subsection B), and (ii) all other violations of the Act (current subsection C)?

OTHER SUBSTANTIVE ISSUES None.

ALTERNATIVES None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL Status Quo.

Ambiguity and probable unlawful provisions in law as to various campaign reporting requirements and uncertainty and lack of coverage over what constitutes independent or coordinated expenditures.

AMENDMENTS None.